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12 Paradox Entertainment, Inc., Paradox Entertainment AB
13 and Fredrik Malmberg

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

STAN LEE MEDIA, INC., a Colorado
corporation,

Plaintiff,

vs.

CONAN SALES CO., LLC, a Delaware
limited liability company; CONAN
PROPERTIES INTERNATIONAL LLC,
a Delaware limited liability company;
PARADOX ENTERTAINMENT, INC.,
a Delaware corporation; PARADOX
ENTERTAINMENT AB, a Sweden
corporation; FREDRIK MALMBERG;
ARTHUR LIEBERMAN; JUNKO
KOBAYASHI; GILL CHAMPION; and
DOES 1-10, inclusive,

Defendants.

Case No.: CV11-06861-SVW (SSx)

**MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT OF DEFENDANTS'
MOTION TO DISMISS
COMPLAINT OF STAN LEE
MEDIA, INC.**

Assigned to the Honorable Stephen V.
Wilson in Courtroom 6

Hearing Date: November 21, 2011

Time: 1:30 p.m.

Courtroom: 6

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1 **I. Introduction**

2 The complaint of plaintiff, Stan Lee Media, Inc. (“SLMI”), should be
3 dismissed because it is an impermissible and untimely collateral attack on a
4 settlement approval order, SLMI sought, in its bankruptcy proceeding almost nine
5 and a half years ago. None of SLMI’s claims are timely. Nor has SLMI stated a
6 cognizable legal theory of recovery in its complaint against moving parties Conan
7 Sales Co., LLC (“CSC”), Conan Properties International LLC (“CPI”), Paradox
8 Entertainment, Inc. (“PEI”), Paradox Entertainment AB (“PEA”) and Fredrik
9 Malmberg (“Malmberg”) (collectively, “the Moving Parties”).
10

11 This case is one of a number of cases filed by SLMI over the years
12 challenging various orders made during its bankruptcy process. With respect to the
13 order at issue in this case, SLMI failed to appeal the order or otherwise seek review
14 of it in the bankruptcy court. Instead, SLMI filed this baseless, independent action
15 (a collateral attack) almost a decade after the order was entered.
16

17 In the First Claim, SLMI seeks to set aside the order approving a settlement
18 stipulation (“the Settlement Approval Order” or “Order”) between SLMI and one of
19 its secured creditors, defendant and moving party, CSC, which is now called Conan
20 Properties International LLC (“CPI”)¹. Pursuant to the stipulation and Settlement
21 Approval Order, SLMI agreed to assign stock in a corporation, Conan Properties,
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¹ CSC’s name was changed to Conan Properties International LLC on or about
28 November 7, 2002. (See Exhibit “A” to Request for Judicial Notice (“RFJN”)).

1 Inc (“CP”), and certain contract rights relating to intellectual property owned by
2 CP, back to CSC, the company from whom SLMI had originally acquired the stock.
3 Since at least 2002, SLMI has been fully aware of the Settlement Approval Order
4 and the circumstances surrounding its entry.

5 SLMI has also had constructive notice of the facts that relate to its claims for
6 several years. SLMI has been involved in other litigation, including litigation
7 before this Court, relating to the same bankruptcy since as early as January, 2007.
8 (See QED Productions, LLC v. Nesfield, Case No. CV 07-0225 SVW). In
9 addition, as alleged in the complaint, the intellectual property rights sold to CSC
10 have been openly exploited by CSC/CPI since in or around 2003. Despite being on
11 constructive notice of its claims for years, SLMI has failed to allege facts make a
12 factual showing that justifies its substantial delay in challenging the Order.
13 Furthermore, given SLMI’s substantial and unjustified delay, if the Order were set
14 aside, the Moving Parties, who have exploited, enforced and protected the
15 intellectual property for almost a decade, would suffer substantial undue prejudice.
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17 SLMI’s challenge to the Order on the grounds that it failed to give notice to
18 some of its shareholders or disclose certain information to the bankruptcy court
19 when seeking the order is not only untimely but it has no merit. SLMI has failed to
20 allege any facts which show that it has standing to assert the claims of unknown
21 and unidentified shareholders, or that individual shareholders would have had
22 standing to object to the stipulation.
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1 Furthermore, the Bankruptcy Code does not require that notice of motions,
2 such as the one filed, be given to shareholders. All that is required is notice and a
3 hearing “as is appropriate in the particular circumstances”. The bankruptcy court in
4 the underlying case found that notice, which was given by SLMI’s own bankruptcy
5 counsel, was “appropriate in the particular circumstances” and that a hearing was
6 unnecessary “in the particular circumstances”. SLMI has pled no facts which show
7 that the bankruptcy court’s decision should be second guessed.
8

9 SLMI’s other ground in setting aside the Order is also untimely and baseless.
10 SLMI alleges that it should be relieved from the bankruptcy court’s Order because
11 certain information relating to the circumstances surrounding its entry, or persons
12 related to SLMI, was not disclosed to the bankruptcy court. These allegations fail
13 because SLMI knew or should have known about them years ago. Furthermore,
14 they are insufficient to show a fraud on the court. Non-disclosure of information,
15 alone, does not constitute fraud on the court. Moreover, SLMI’s allegations are
16 simply too vague and lacking in specificity to meet the heightened standard
17 necessary to show a fraud on the court². With respect to the Moving Parties, there
18 are no facts from which one could conclude that they had a duty to disclose any of
19 the information allegedly not disclosed. Nor are there facts alleged from which one
20 could conclude that SLMI was prevented from fully or fairly presenting its case.
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² There are no substantive factual allegations regarding the Moving Parties’
alleged involvement in the bankruptcy proceeding, let alone, the alleged fraud on
the court.

1 SLM was represented in the bankruptcy by outside counsel who opposed CSC's
2 motion for relief from stay. The settlement Stipulation was extensively negotiated,
3 and SLM sought approval of it through its Motion. Therefore, there has not been,
4 nor can there be, a showing of fraud on the court.

5 Because SLM improperly asserts as a collateral matter that the Order is
6 void, has failed to plead facts that show that the order is void, and has failed to
7 timely seek relief from the Order, the First Claim for Relief should be dismissed.

8 SLM's Second, Third, Fifth, Sixth and Seventh Claims for Declaratory
9 Relief, Avoidance of Transfer, Restitution, Accounting and Constructive Trust
10 should also be dismissed. These claims are all dependent upon SLM's First Claim
11 for Relief from Order, which for the reasons previously stated, fails as a matter of
12 law. They are also barred by the applicable statute of limitations and/or otherwise
13 insufficiently pled.

14 SLM's Fourth Claim for Breach of Fiduciary Duty is also untimely and
15 lacking in merit insofar as it is alleged against the Moving Parties. Like the other
16 claims, the facts that give rise to this claim allegedly occurred in or around 2002.
17 No justifiable excuse has been pled for the substantial delay in pursuing this claim.
18 Even if it had been timely pursued, SLM has failed to allege on what basis the
19 Moving Parties owed a fiduciary duty to SLM. Because the existence of a
20 fiduciary duty has not been pled, the Moving Parties cannot be liable for SLM's
21 Fourth Claim.

1 Lastly, SLMI has failed to allege any substantive factual allegations of
2 wrongdoing on the part of the Moving Parties or that an inequitable result would
3 occur if their separate existence were recognized. It is unclear why CPI, PEI, PEA
4 or Mr. Malmberg are even named as defendants? There are virtually no substantive
5 factual allegations of wrongdoing alleged against these parties, or any explanation
6 as to why their separate existence should not be recognized. These parties should
7 therefore be dismissed from this case.

8

9 **II. Statement of Facts**

10 SLMI filed its complaint against the Moving Parties and defendants Arthur
11 M. Lieberman, Junko Kobayashi and Gil Champion on August 19, 2011, the very
12 day of the worldwide premiere of the film *Conan the Barbarian*. No demand letter
13 or notice was given to any of the Moving Parties prior to the filing of the complaint.
14 One can only presume that this ambush was intended to, and did, embarrass the
15 Moving Parties at a very important time. (See Exhibit "B" to RFJN).

16 In its complaint, SLMI attempts to allege seven claims against the Moving
17 Parties for: (1) Relief from Order; (2) Declaratory Relief; (3) Avoidance of
18 Transfer; (4) Breach of Fiduciary Duty; (5) Accounting; (6) Restitution of Unjust
19 Enrichment; and (7) Constructive Trust³. All of SLMI's claims pertain to acts or
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26 ³ The list of claims in the caption in SLMI's complaint does not match the
27 numerical manner in which the claims are laid out in the body of the complaint.
28 For example, in the caption, SLMI's Fifth Claim is for Restitution of Unjust
Enrichment, yet, in the body of the complaint, the Fifth Claim is for an Accounting.
For purposes of this Motion, the Moving Parties refer to the body of the complaint
to determine the claim number.